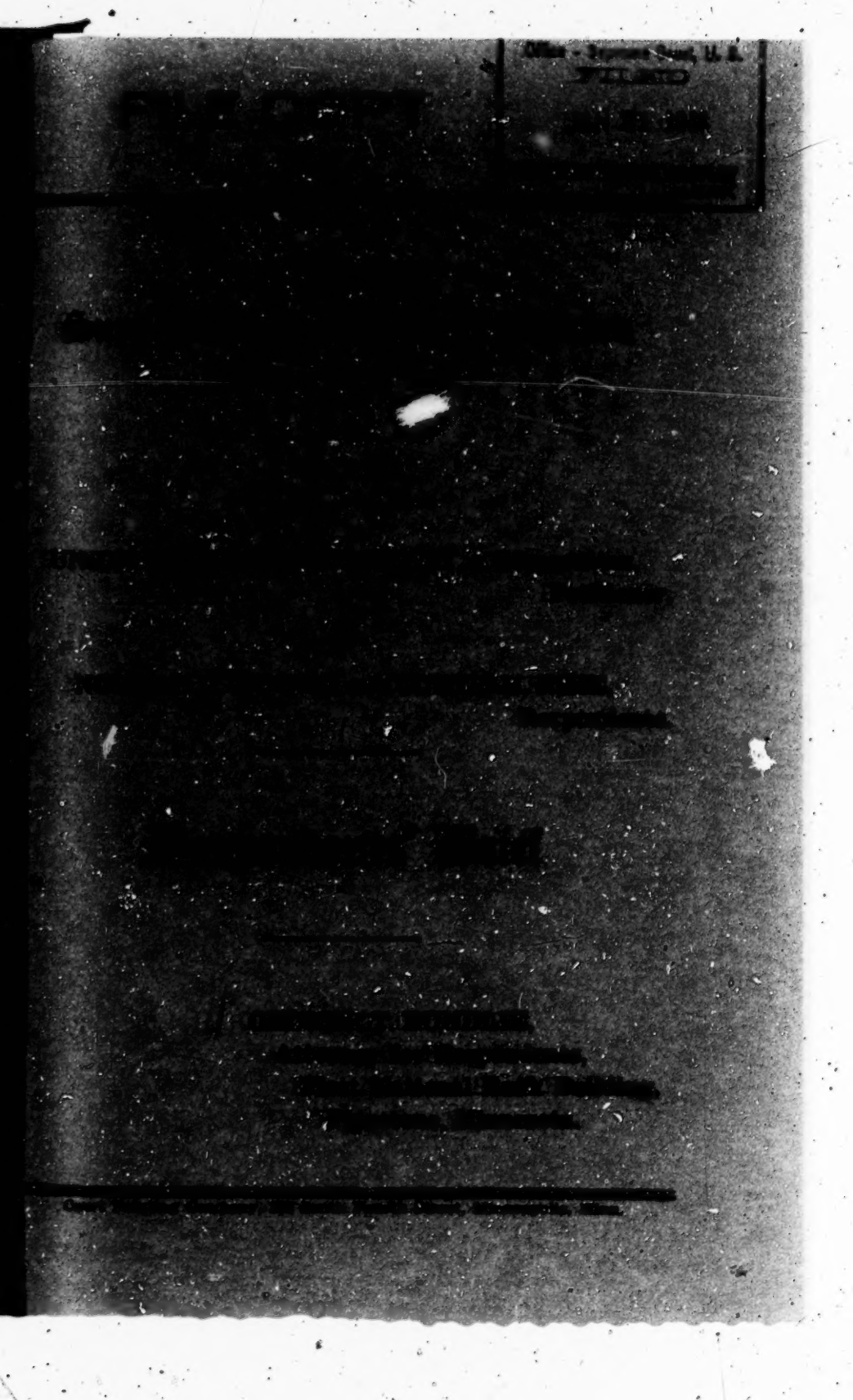

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In the Supreme Court of the United States

October term, 1943

No. 291

UNION BROKERAGE COMPANY, a Corporation,
Petitioner,

vs.

NORMAN G. JENSEN and CURTIS M. RIME,
Respondents.

Respondents' Brief

Respondents herein respectively submit their brief in opposition to petitioner's brief which seeks a reversal of the decision of the Supreme Court of Minnesota filed on May 14, 1943, and judgment docketed on May 23, 1943, reported in 9 N. W. (2d) 721 (Record p. 142).

Respondents concur in the statements contained in petitioner's brief as to **"Opinions Below"** and **"Jurisdiction"** (pp. 1 and 2).

I.

SOLE QUESTION AND ISSUE PRESENTED

Petitioner maintains that there are six questions (Brief 2 and 3) presented to this Honorable Court's con-

sideration in reviewing the decision in this case by the Supreme Court of the state of Minnesota (R. p. 142), 9 N. W. (2d) 721.

Respondents represent that there is only one question or issue presented to this Court. This is aptly stated by Justice Youngdahl, who wrote the unanimous opinion for the Minnesota Supreme Court, in the language following:

> "The ultimate question in the instant case then is: **Did the customhouse brokerage business conducted by plaintiff (petitioner) in a substantial way interfere with or obstruct the exercise of the granted power of Congress to regulate interstate commerce.**" 9 N. W. (2d) 727 (R. p. 152). (Emphasis supplied.)

Petitioner, a North Dakota Corporation, maintained a customhouse brokerage business and office at Noyes in Kittson County, Minnesota. Petitioner did not qualify under the Minnesota Foreign Corporation Act (Minn. St. 1941, Sec. 303.20; Mason St., 1940 Supp., Sec. 7495-20) requiring a foreign corporation, before it can do business in Minnesota and maintain any action in Minnesota courts, to first qualify and obtain the requisite certificate of authority to do business from the state. This, petitioner failed to do. The Minnesota Supreme Court, accordingly, reversed the State District Court.

The Minnesota Supreme Court, in effect held, under the facts summarized in its opinion, that the activities of petitioner, a foreign corporation, as a customhouse broker, were **local and intrastate** in character and had **no substantial relation to interstate commerce, and** hence petitioner would be required to first comply with the Minnesota Foreign Corporation Statute and obtain a certificate of authority to do business in Minnesota before bringing this action or any action in Minnesota courts.

It is conceded that were petitioner engaged substantially in interstate commerce that petitioner then need not qualify or comply with the Minnesota Foreign Corporation Act, and, consequently, could maintain this action in the Minnesota courts. Conversely, if petitioner is engaged in business which only collaterally, incidently or remotely affects interstate commerce, as the Minnesota Supreme Court held, then petitioner's business is intrastate in character and petitioner is amenable to the Minnesota Foreign Corporation Act.

This then, presents the only and ultimate question before this Honorable Court.

II.

STATUTES AND CUSTOMS REGULATIONS INVOLVED

Under this heading, petitioner has failed to include under the "Appendix," Section 6 of Rules and Regulations Relating to Customhouse Brokers, U. S. Treasury Dept. Circular, No. 559, also designated as Article 1410, Customs Regulations of 1937 (Art. 1396 of 1930 Regulations as pleaded in petitioner's reply, R. p. 26).

This omitted regulation which constituted a part of Petitioner's (Plaintiff's) Exhibit A offered in evidence upon trial (R. p. 56 of record in the Minnesota Supreme Court) is obviously the most enlightening and important regulation concerning customhouse brokers in connection with the ultimate and sole issue before this Court.

This regulation, Article 1410, Customs Regulations of 1937 (pleaded by petitioner in its reply as Art. 1396 of 1930 Regulations, R. p. 26) and which was considered and discussed by the Minnesota Supreme Court, is as follows:

Licenses for More Than One Customs District.— Separate licenses shall be required if the licensee desires to transact customs business in more than one customs district. However, a licensee having a license in force in one district may on application to the Committee be granted a license to transact business in another district without further examination, **provided it appears on investigation that the licensee is authorized to do business in the State or States in which such other district is situated, and is prepared and qualified to render efficient service in such other district * * *."** (Emphasis supplied.)

Petitioner likewise failed to include in its "Appendix," the pertinent Article 1411, Customs Regulations of 1937, as follows:

License, When Not Required.—(a) An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) A common carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a customhouse broker.

(c) A resident agent employed by one or more vessels or lines of vessels is not required to be licensed as a customhouse broker in order merely to enter or clear vessels consigned to him by a principal. Proof of the agency must be filed with the collector.

(d) An employee of a licensed customhouse broker is not required to be licensed in order to act solely for his employer, but in order that such employee may sign customs documents on behalf of his employer the broker must file with the collector a power of attorney for that purpose. Each broker

shall file with the collector at each port where the business is to be transacted an authorization specifically naming each employee who may properly act for him. A broker must promptly give notice of any change in the authority of such employees and must exercise such supervision of them as will insure proper conduct on the part of the employees in the transaction of customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen. Every attorney in fact acting for a licensed customhouse broker must be a resident of the United States.

III.

STATEMENT OF CASE

Respondents deem it necessary to supplement and amend, in certain respects, as hereinafter stated, petitioner's statement of the case (Brief page 4).

On September 6, 1938, when respondent Jensen sold his brokerage business at Portal to petitioner, said Jensen also had a customhouse brokerage office and business at Northgate, North Dakota, about 13 miles easterly of Portal, North Dakota. The petitioner, Union Brokerage Company, purchased only the Portal, North Dakota, business, and permitted Jensen to operate his customhouse brokerage business at Northgate, North Dakota (District Court Finding 13, R. p. 127, f. 702; R. p. 128, f. 704).

The State District Court found that the rerouting of shipments by the Canadian Pacific Railway (hereinafter referred to as C. P. R.) through Noyes, Minnesota, rather than Portal, North Dakota, did affect 90 to 95 per cent of the brokerage business at Portal, or in other words

there was a loss of foreign shipments at Portal of 90 to 95 per cent by virtue of such change (R. p. 144, f. 730; R. p. 131, f. 708).

Petitioner was incorporated in 1928 and up to December 5, 1940, maintained only one place of business and office and that was at Portal, North Dakota. Pursuant to corporate action, petitioner authorized the establishment of an office and did establish such office, at Noyes, Minnesota, three hundred miles easterly of Portal, North Dakota (Finding 32, R. p. 136, f. 717). The rerouting of the C. P. R. took effect July 1, 1940 (Finding 23, R. pp. 131-132; R. p. 144, f. 730). Respondent Jensen opened an office at Noyes, Minnesota, three hundred miles away from Portal, North Dakota, on or about July 1, 1940 (R. p. 146, f. 733). The petitioner did establish and operate a customhouse brokerage business (December 5, 1940) at Noyes, Minnesota, shortly after Respondent Jensen's resignation from petitioner's employ on November 7, 1940, in competition with Respondent Jensen (Finding 32, R. p. 136).

The Minnesota Supreme Court in its decision has defined the duties of customhouse broker thus:

> "Shipments of merchandise arriving at a port of entry must be declared as to contents and value, duly inspected by agents of the collector of customs at that port, and the prescribed tariff paid on dutiable items. The customhouse broker, for an agreed compensation, performs this service for the benefit of the shipper or importer of goods. He receives from the carrier the bills of lading covering the shipments and presents these, together with other documents peculiar to the business, to the collector of customs, who estimates the duty to be paid thereon. This sum is advanced by the broker for his client, the shipper. This service, of necessity, involves a working knowledge of the rules and regu-

lations of customs law, as well as sufficient information to enable the broker to set up and maintain proper books and records in conformity with federal requirements relating to customhouse brokers. In order that a broker may be in a position to render this service to a shipper, it is first necessary that the particular shipment be consigned to a specific broker. A responsibility rests upon the common carrier of goods to deliver them to none other than the consignee named in the bill of lading. Too, unless the proper consignee presents the bill of lading to the customs officers for payment of duty, payment is refused" (R. p. 144, f. 730) 9 N. W. (2d) 722, 723.

Respondent Jensen resigned as an officer and employee of petitioner at the request of petitioner on November 7, 1940 (Finding 28, R. p. 134).

Prior to the time that petitioner opened its office at Noyes, Minnesota, in competition with respondent Jensen, and subsequent thereto the petitioner was not authorized to act as a customhouse broker at Noyes, Minnesota, as it had failed to qualify to act as such under the regulations of the Treasury Department, and, further, had not procured from the State of Minnesota the required certificate to do business in Minnesota (R. pp. 147, 148, ff. 734, 735).

Article 1410, Customs Regulations of 1937, provides:

"However, a licensee having a license in force in one district may on application to the committee be granted a license to transact business in another with further examination, provided it appears on investigation that the licensee is authorized to do business in the state or states in which such other district is situated, and is prepared and qualified to render efficient service in such other district" (R. p. 156, f. 745). (Emphasis supplied.)

The petitioner, Union Brokerage Company, until such times as it furnished bonds and qualified as a broker at Noyes, Minnesota, could not and did not transact business as a customhouse broker at Noyes, Minnesota. Certain shipments were sent through Noyes designating the petitioner as the customhouse broker. Claude Phillips, the chief clerk for the Soo Line and the Great Northern Railways at Noyes, testified in substance that such shipments, designating petitioner as customhouse broker, were refused until the shipper designated a qualified customs house broker at Noyes. Petitioner's own witness, Claude Phillips, a former customhouse official (R. p. 83, f. 405), testified clearly as to the handling of such shipments at Noyes, Minnesota. The pertinent testimony of Mr. Phillips is found on R. p. 89 and 90, ff. 415, 416, as follows:

"Q. Did you not tell the court, in substance, that if a bill of lading came with a broker designated on it like, we'll say, the Union Brokerage Company, and that broker was not there to receive it to handle it, before a change could be made the originating railroad would have to furnish a so-called carrier's certificate?

A. Yes.

Q. And the originating railroad in order to acquire the authority to furnish that certificate would have to communicate with the shipper and have the shipper make the designation?

A. That's the way they did it.

Q. In other words, if there is a shipment sent to the Union Brokerage Company and there was no one there to handle it for them some other broker made an application to the forwarding railroad for a shipper's certificate and that forwarding railroad would then have to communicate with the shipper and get the authority to issue the shipper's certificate?

A. Yes.

Q. That is all that amounted to?
A. Yes" (See also R. pp. 75, 76, ff. 393, 394).

Jensen did not issue any carrier's certificates as the same were issued only by the carrier under direct authority of the shippers, and not otherwise (R. p. 89, f. 416). A rubber stamp with Jensen's name thereon was used when Jensen was finally determined, in certain cases, to be the broker (R. p. 93, f. 427). Jensen, therefore, could not "convert" petitioner's business, as such business was solely the shippers who could deal with anyone they designated. The above quoted testimony of Claude Phillips speaks for itself and needs no further explanation.

Under the Regulations of 1937, an importer or his employee need not be licensed as a customhouse broker and he need only furnish a single entry bond covering the value of the shipment and the estimated duties, in place of the term entry bond.

Although not germane to the sole question and issue before this Court, respondents nevertheless feel constrained to comment briefly as to certain other factual matters stated in petitioner's brief.

Petitioner (brief p. 6) states that Respondent Jensen had advance and inside information about the proposed rerouting of freight shipments by the Canadian Pacific Railway Company, effective July 1, 1940, through Noyes, Minnesota, rather than Portal, North Dakota. That said Jensen conceived the scheme of capturing petitioner's business by following such business to Noyes. Suffice it to call attention of this court to the record of the testimony of petitioner's own witnesses. Mrs. Annie Kramer, an officer and director, testified that Respondent Jensen advised her of the proposed rerouting on June 22, 1940 (R. p. 117, f. 609).

Petitioner's witness, W. F. Mackay, testified that concerning such proposed rerouting before same took place that, "Yes, the whole country knew that" (R. p. 113, f. 578).

Petitioner (brief p. 6) also states that, "By November 5, 1940, his (Jensen's) fraudulent breach of duty had been discovered." This statement can not go unchallenged. The simple fact was that petitioner had never, prior to December 5, 1940, transacted any business or maintained any office but at Portal, North Dakota. Respondent Jensen about July 1, 1940, merely set up an office at Noyes, Minnesota, 300 miles away from Portal. He had previously been permitted to retain his Northgate customhouse brokerage business only 13 miles easterly of Portal, North Dakota (R. pp. 127, 128, ff. 701-704).

Petitioner (brief p. 8) asserts that one of the issues in the case is the question whether or not the state of Minnesota may "reduce the area within which petitioner is empowered to do business as a customhouse broker by denying it the right to do business in that part of the territory or district which lies in Minnesota and which is included in the United States Customs Collection District as designed by the President of the United States pursuant to authority of Congress." We submit that this is not an issue because the question of extent of territory would have no bearing on whether or not a business is intrastate or interstate. Further, the state of Minnesota has not by any decree, statute or action reduced or attempted to reduce the area within which petitioner may practice as a customhouse broker under federal broker's license. Again respondents repeat that the only concern of the state of Minnesota as to the activities of petitioner is that petitioner who so wished to create, estab-

lish, maintain, and operate an office and its principal place of business in the state of Minnesota did so without complying with this purely local state law which simply requires petitioner to qualify, pay the requisite fees, appoint an agent upon whom service of process can be made, as a condition precedent to the privilege and right to do business within the state's borders. This, and nothing more, is the only concern that the state of Minnesota has to the activities of this petitioner. As held by the Minnesota Supreme Court, the reasonable requirement of the law requiring petitioner to first qualify under the foreign corporation act before doing business in this state, and thus place it upon a parity with domestic corporations, does not, and can not amount to, an obstruction or interference with interstate commerce. Further, "On the other hand, it is a protection to the people of this state in providing for them a method for the service of process upon a foreign corporation without the necessity of going into a foreign jurisdiction to secure relief" (Minn. Sup. Ct. opinion, R. p. 158, f. 747).

On pages 9, 10, 11, of its brief, petitioner refers again to the rules and regulations concerning the licensing and practicing of customhouse brokers. Here again it is deemed necessary to call attention to this Court to perhaps the most important and salient regulation which has a direct bearing on the sole issue of this case and which regulation reflects the interpretation of the Treasury Department concerning the necessity of a customhouse broker who seeks an additional license in another district, usually another state, for such broker to first qualify to do business in such district, usually a state. Customs Regulations of 1937, Article 1410, covers the present situation as this provision so plainly provides that such additional license may be granted "pro-

vided it appears on investigation that the licensee is authorized to do business in the state or states in which such other district is situated."

It further conclusively appears to be the interpretation, custom, practice and procedure of the Bureau of Customs, acting under direction of the commissioner, that such bureau recognizes the force and effect of state laws regarding the right, license and privilege of a foreign customhouse broker doing business in such state. While the customhouse brokers license authorizes such broker to practice throughout the area covering such license, nevertheless such federal license does not permit nor authorize a customhouse broker to entirely ignore and be immune to the laws of the state in which he or it does business.

Such, unquestionably, is the position of the Bureau of Customs issued by direction of the commissioner as evidenced by the following communication and ruling:

"(SEAL) In Reply Refer To
Office of the Commissioner 346.111

Address Reply to
Commissioner of Customs

TREASURY DEPARTMENT
BUREAU OF CUSTOMS
WASHINGTON

Sept. 1, 1942.

Mr. Norman G. Jensen,
Noyes, Minn.

Sir:

Reference is made to your letter of August 1, 1942 (NGJ:bm), relative to the propriety of a broker licensed in District No. 34 carrying on business as a customhouse broker in that part of the state of Minnesota which is included in Customs Collection District No. 34 without qualifying himself as a broker under the laws of the state of Minnesota.

The holder of a customhouse broker's license is authorized to transact customhouse brokerage business at any port in the district in which the license is issued, so far as the customs laws and regulations are concerned. Compliance with state laws in the customs district covered by a license already in force is entirely a matter between the broker and the authorities of the particular state involved.

By direction of the Commissioner:

Very truly yours,

G. H. Griffith,

Assistant Deputy Commissioner."

Petitioner (brief page 13) correctly states that "the customhouse broker does not load nor produce the goods moving in interstate or foreign commerce." Neither does the broker have any control over the shipment, the port of origin, the route the goods are to travel on or the railroad line or the place of delivery. He exercises no control whatsoever over the movement of these interstate shipments. His services are strictly those of record making in the clearance of the duties consisting of bookkeeping, paper work and the payment of duties. He does not come into physical contact with the shipments and his service is strictly personal, rendered wholly within the confines of Minnesota where his place of business and office was located. This strictly personal service, as an independent contractor, is entirely collateral to interstate commerce and affects interstate commerce but remotely, if at all. It is not necessary for the shippers to employ a customhouse broker to perform this paper work, pay the duties or obtain clearance of customs because the shipper or the shipper's employee can do this without being licensed. Economically, it would not be profitable for a shipper to have an employee stationed constantly at any given port where the shipments are intermittent. Hence such ship-

pers usually secure a customhouse broker, when the occasion arises, as an independent contractor to perform this paper work and personal service. A customhouse broker, as an independent contractor, is not under the supervision, direction or control of the shipper as to the means and methods of clearing shipments, such customhouse broker being only accountable to the shipper for the results obtained, and nothing more.

Petitioner (brief page 14) states, "the title of the broker dates from the time the bill of lading is executed and delivered to the carrier and shipper at the point of origin and continues until the merchandise has been released from customs." This is wrong. The broker does not have actual title to any of the merchandise shipped but by legal fiction only, the broker is deemed the owner of the shipment only for the purpose of paying the duties thereon and obtaining clearance of customs. Section 483 of the Revenue Act of the Tariff Act of 1930 provides

> "for the purposes of this title * * *
>
> (2) A person making entry of merchandise under provision of subdivision (h) or (i) of Section 484 (relating to entry on carrier certificate and on duplicate bills of lading respectively) shall be deemed the sole consignee thereof."

Petitioner (brief p. 20), in its last paragraph under statement of case, concludes that

> "the business of the customhouse broker begins at the originating station in Canada and continues thereafter until the shipment has been cleared from customs, to be thereafter transported to the buyer or ultimate consignee by common carrier."

This is not the situation. The broker's only service is performed at the port of entry. He maintains no office at the Canadian point of shipment, has no part in the

designation and routing of the shipment nor the place of destination. The broker's services are strictly of a personal nature as a independent contractor to do the bookkeeping, paper work, and pay the duties. As before stated, he has no control or direction over the movement of the shipment, does not come into physical contact with the merchandise and does not even inspect or cause same to be inspected. (Article 223, Customs Regulations of 1937 and Section 461, Tariff Act of 1930.) The broker neither loads nor unloads interstate shipments and his personal service is strictly in the nature of an independent contractor and are no more than collateral and incidental to interstate commerce. Further, under Section 484 (j) Tariff Act of 1930 it is provided, "Merchandise shall be released from customs custody only to or on order of carrier by whom the merchandise is brought to the port of which entry is made." In other words the customhouse broker exercises no control, supervision, dominion or direction over said merchandise and the routing of same.

IV.

SPECIFICATIONS OF ERROR

Petitioner has assigned seven errors committed by the Supreme Court of Minnesota.

As heretofore stated, the sole and ultimate question in this case upon which the Minnesota Supreme Court based its decision in favor of respondents, is aptly summarized by Justice Youngdahl as follows:

> "The ultimate question in the instant case then is: Did the customhouse brokerage business conducted by plaintiff **in a substantial way interfere with or obstruct the exercise of the granted power of Congress to regulate interstate commerce.**" 9 N. W. (2d) (page 737). (R. p. 152, f. 740.)

The issue, therefore, should properly be confined to this ultimate question upon which the Minnesota Supreme Court decision is based, and not otherwise.

V.

CASES CITED AND RELIED UPON BY PETITIONER, DISTINGUISHED

Petitioner, under the headings of "SUMMARY ARGUMENT," and "ARGUMENT," cites a number of cases which it contends supports its theory that the Minnesota Supreme Court erred in holding favorably to respondents herein, i.e., that petitioner, doing business within the state of Minnesota as a corporate customhouse broker, was engaged in intrastate commerce and hence must first comply with the Minnesota Foreign Corporation Act before it could maintain this action in the Minnesota courts. It appears that the majority of cases relied upon by petitioner concern cases affecting various telegraph and telephone companies, common carriers and others engaged in the actual transaction of business between states and foreign countries. With cases of this type, and the holdings therein, we have no quarrel, because the activities and business of the parties in such cases are not at all analogous to the activities of petitioner herein. Such railroad, common carrier and telegraph cases, etc., surely can be of no aid or assistance to this Court in determination of the one salient issue in this case. For that reason, it is deemed unnecessary to indulge in extended argument distinguishing that type of case. This part of the brief will, therefore, be directed only to those types of cases which may possibly, in any degree, have some bearing upon the issue herein.

While it is true that there is no decision of this Honorable Court directly passing upon the question as to whether or not the activities of a corporate customhouse broker, under the factual situation herein, substantially or actually obstruct or interfere with interstate commerce, we do nevertheless find, as will be argued hereafter, a number of cases which discuss and decide pertinent questions relative to the activities of a customhouse broker and his or its amenability to state jurisdiction. These cases are favorable to respondents and in harmony with the Minnesota Supreme Court decision. Suffice it, then, to distinguish the so-called "border line cases" relied upon by petitioner.

Petitioner cites the cases of Swift & Company v. U. S., 196 U. S. 375, 40 L. Ed. 518; Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735; and Lemke v. Farmers' Grain Co., 258 U. S. 50, 66 L. Ed. 458. In these three it was held that the business transacted was interstate business predicated upon the grounds and reasons that the shipments were interstate in character and that the shippers had control of the movement of the shipments or were the owners thereof. We have no quarrel with those decisions as clearly under the facts of those three cases, such business was clearly interstate. In the Stafford v. Wallace case, supra, Chief Justice Taft clearly distinguishes that case and the Swift case and the Lemke case from the Hopkins v. U. S. case, 171 U. S. (578) 19 S. Ct. 40, which will be discussed hereafter. In said Stafford case, this Honorable Court makes again the clear distinction between those actually engaged in interstate commerce, and brokers and persons who perform certain facilities or incidental service only in connection with interstate commerce, the Court saying (page 404 of 42 S. Ct. Rep.):

"Counsel for appellants cite cases to show that transactions like those of the commissioned men or dealers here are not interstate commerce or within the power of Congress to regulate. The chief of these are Hopkins v. United States, 171 U. S. 604, 19 Sup. Ct. 40, 43 L. Ed. 290, and Anderson v. United States, 171 U. S. 604, 19 Sup. Ct. 50, 43 L. Ed. 300. These cases were considered in the Swift case and disposed of by the court as follows (196 U. S. 397, 25 Sup. Ct. 280, 49 L. Ed. 518):

> 'So, again, the line is distinct between this case and Hopkins v. United States, 171 U. S. 578. All that was decided there was that the local business of commission merchants was not commerce among the states, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. **They only furnish certain facilities for the sales.**' " (Emphasis supplied.)

Petitioner also cites the case of Crutcher v. Kentucky, 141 U. S. 47, 35 L. Ed. 649, claiming that such case upholds its contention that a customhouse broker is engaged in interstate commerce. In the Crutcher case the plaintiff in error was doing business as the agent for the United States Express Company engaged in trading and doing business as a **common carrier** by express of goods, merchandise and other valuable things in interstate commerce. This Court rightfully held in that case that the express company and its agents were engaged in interstate commerce and hence state licensing and taxing laws of Kentucky were not applicable to such interstate carrier. This Court, however, did distinguish that type of case from the cases covering foreign corporations doing a strictly local business within the confines of the state. The court in the Kentucky case saying:

" 'The case is entirely different from that of foreign corporations seeking to do a business which does not belong to the regulating power of Congress. The insurance business, for example, cannot be carried on in a state by a foreign corporation without complying with all the conditions imposed by the legislation of that state. So with regard to manufacturing corporation, and all other corporations whose business is of a local and domestic nature, which would include express companies whose business is confined to points and places wholly within the state. The cases to this effect are numerous. (Citing cases.)' "

It is stressed again that petitioner's customhouse brokerage business is purely local to Minnesota and is confined solely and wholly to Noyes, Minnesota, and hence petitioner must comply with the Minnesota Foreign Corporation Statute.

Petitioner quotes (brief p. 29) from the case of James v. Dravo Contracting Co., 302 U. S. 134, 82 L. Ed. 155, 169. Petitioner cites such case in connection with the proposition that a state has no power to lay a tax on interstate commerce which would be a burden on such commerce. We do not quarrel with this James v. Dravo Contracting Co., decision at all, but, we do say that the simple requirement of the state of Minnesota that the petitioner pay the license fee, appoint a resident agent upon whom service of process can be made, and comply with the other provisions of Foreign Corporation Act, lays absolutely no burden or obstruction on interstate commerce. The licensing of petitioner by the state, as a foreign corporation, to do business in Minnesota surely has no direct relation or connection with interstate commerce. The Minnesota Foreign Corporation law can in no sense interfere with the performance of the federal gov-

ernment's functions. The test then is, does this simple requirement of the Minnesota law requiring petitioner to pay the foreign corporation license fee, and appoint a resident agent upon whom service of process can be made and make the reports required by state law, interfere at all in the functioning of the federal government in so far as the Tariff Act is concerned? Obviously not. That this Honorable Court recognizes the importance of reserving to the state jurisdiction for local purposes and which does not interfere with federal governmental functions is well stated in this case of James v. Dravo Contracting Co., when the Court said (page 148 of 302 U. S.):

> "The possible importance of reserving for the state jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired."

Petitioner repeatedly cites and has quoted from the 1937 case of Puget Sound Stevedoring Co. v. Tax Commission, 302 U. S. 19, 82 L. Ed. 68, 58 Sup. Ct. Rep. 72, as fortifying their position.

An analysis of that case reveals it was rightfully decided as the work which the stevedors were doing consisted of loading and discharging cargoes by longshoremen who were under the direct control and direction of the Puget Sound Stevedoring Co. Hence they were directly engaged in interstate commerce. That decision fortifies and substantiates the position of appellants here in their contention that any work or service performed which is merely incidental to, and is an aid or facility to interstate commerce, is not interstate commerce; whereas, the actual transportation or the loading or unloading of cargo under the direction of the

party having control of such labor is interstate commerce.

In the stevedore case, the opinion of which was written by Justice Cardozo in 1937, the United States Supreme Court very clearly gives this distinction and holds that if the Stevedoring Company's business consisted of merely supplying longshoremen without directing or controlling the work of loading, such service is not interstate or foreign commerce but local business subject to state taxation, Justice Cardozo saying (page 74):

> "The business of appellant (Stevedoring Co.), in so far as it consists of supplying longshoremen to shipowners or masters **without directing or controlling the work of loading or unloading,** is not interstate or foreign commerce, but rather a local business, and subject, like such business generally, to taxation by the state.
>
> "What is done by appellant in connection with activities of this order is similar in many aspects to the work of a ship's chandler, and even more closely similar to that of a labor or employment bureau. Such a bureau was considered in Williams v. Fears, 179 U. S. 270, 278, 21 S. Ct. 128, 45 L. Ed. 186, and its business found to be no part of interstate or foreign commerce, though the transactions of such commerce were increased thereby. * * * Little analogy exists between the activities now in question and those reviewed in McCall v. California, 136 U. S. 104, 10 S. Ct. 881, 34 L. Ed. 391; Texas Transport & Terminal Co. v. New Orleans, 264 U. S. 150, 44 S. Ct. 242, 68 L. Ed. 611, 34 A. L. R. 907; and Di Santo v. Pennsylvania, 273 U. S. 34, 47 Sup. Ct. 267, 71 L. Ed. 524. The contractors there considered were found to be acting as agents of foreign steamship companies with authority to make contracts binding on the principals and even running in their names. If appellant stands in that relation to the vessels that it serves in this branch of its activities, it has failed

to make the fact apparent by the allegations of its bill. The effect of such a showing is not before us now." (Emphasis supplied.)

This stevedore case supports appellants' contention in that petitioner herein was engaged in a private local business and hence amenable to the Minnesota foreign corporation statutes. Further, that neither the shipper nor the United States government directed or controlled the activities of petitioner; that it rendered only personal service as an aid and facility of interstate commerce, and that petitioner was neither an employe or an agent of the United States government or the shipper in doing such brokerage service. A customhouse broker acts and serves as an independent contractor specializing in rendering personal service only in clearing shipments which could be performed by the shipper or its employe without a customhouse broker's license.

The petitioner has seen fit to quote somewhat at length from the findings of State District Court of Minnesota. The decision of the State District Court is not up for review by this Honorable Court. This case is before this Court for the review of the Minnesota Supreme Court decision which reversed the State District Court.

The petitioner cites the Minnesota case of Rock Island Plow Co. v. Peterson, 93 Minn. 356, 101 N. W. 616, as supporting its theory that it is engaged in interstate commerce. We have no quarrel with the decision of that Minnesota case. It does not aid, in any manner, petitioner in the present case. In that case the plaintiff was an Illinois corporation engaged in manufacturing of and dealing in farm machinery in that and other states, and maintained an agency in this state for the purpose only of receiving, storing, and delivering goods to purchasers in this state to whom sales were made by orders taken

by traveling salesmen, subject to the approval of plaintiff at its home office in Illinois. The agents in this state had no authority to make sales of property stored with it, or to take or receive orders therefor. Its authority was limited exclusively to delivering goods previously sold by plaintiff through its traveling salesmen. The Supreme Court's decision was clearly right in holding that plaintiff was not doing business within the state in violation of the foreign corporation statute and that its business constituted interstate commerce. The situation would have been otherwise if sales were made directly from a storehouse in this state in line with the case of Brewing Co. v. Peimeisl, 85 Minn. 121, 88 N. W. 441, cited in such case. In the Brewing Co. case plaintiff maintained in a warehouse at Waterville where large quantities of beer and liquors were stored and which were sold by a resident agent of the company and not upon orders taken by traveling salesmen. In that situation, the Brewing Company was engaged in business and was required to qualify under the Minnesota Foreign Corporation Statutes.

VI.

ARGUMENT

Petitioner, in its argument states that the Supreme Court of Minnesota did not find a decision dealing directly with the present problems but there are a few cases which deal with the functions, activities, and business of customhouse brokers. The cases cited by petitioner are four in number. Three of them are of great aid and assistance in the present case and will be discussed hereafter. These three cases, namely Duluth S. S. A. Railway Co. v. Wilson, 167 N. W. 55; People ex rel. Tower v. Tax Comm., 282 N. Y. 407, 26 N. E. (2d) 955;

and State v. Oberly, Inc., 190 La. 1053, 163 So. 347, are discussed at some length in the Minnesota Supreme Court decision. These three cases are all favorable to respondents herein.

The fourth case mentioned by petitioner is Landacke v. Merrill, 20 Fed. (2) 249, which contains a dicta to the effect that a customhouse broker is the agent of the Treasury Department. Such statement, petitioner admits, "was probably unnecessary to the adjudication of the issue actually involved in that case." That case concerned a proceeding to have a customhouse broker's license revoked and the statement which petitioner calls attention to refers to the Treasury Department "whose agent the broker is." Such statement was not a controlling element in that decision. The language used as quoted herein is loose and unfortunate because a customhouse broker is not the agent of the Treasury Department. The United States government, of course, is not bound by any of the acts of such broker. It is clear that neither under the federal customs laws nor the regulations promulgated pursuant thereto is a customhouse broker the agent or representative of the Treasury Department of the United States so that his acts become binding upon the United States as his principal.

It perhaps will be of assistance to this Honorable Court to set forth and discuss the duties and limitations of a licensed customhouse broker. The Minnesota Supreme Court ruled that a customhouse broker is an independent contractor rendering strictly personal service at the port of entry of interstate or foreign shipments and that his business as such within the state is merely incidental and collateral to interstate commerce and affects it, if at all, but remotely. It is also clear that

a broker does not come in physical contact with the interstate shipments, that he is not the importer nor the owner of the goods and neither has he any direction or control over the routing or ultimate destination of such shipments.

The activities of a customhouse broker working on the Canadian border are quite simple. A customhouse broker has no relation whatsoever to an importation before it arrives within the confines of the port of entry in the United States where he is working.

Merchandise shipped from a foreign country or state into the United States or another state is shipped on a through bill of lading from the point of origin to the point of destination within the United States. This point of destination is seldom the port of entry. It is certain that the United States Customs retains this control until the collector has received any and all duties and taxes due him or is satisfied that he will receive said duties and taxes.

After a shipment arrives at the port at which a customhouse broker is working the customhouse broker, if he wishes to clear a particular shipment, takes an invoice and a customs bill of lading, duplicate bill of lading, or carries certificate as a basis for preparing the entry. The preparation and filing of the entry is known as "clearing the shipment." (The customhouse broker may, with the permission of the collector and if properly bonded, assure the collector that he will make the entry within forty-eight hours and the collector may, if he so sees fit, release the shipment for forwarding before the entry is filed.)

The entry consists entirely of paper work, i.e., preparing and completing certain forms as determined by the customs, and, in connection therewith, the computa-

tion of the correct duties and taxes due the United States Customs.

In addition to preparing and filing an entry with the collector of customs, the customhouse broker prepares and keeps certain records and books pertaining to his transactions with the collector of customs and with his clients. These records must be kept for a period of five years.

If, after filing an entry with the collector of customs, it is determined that supplemental duty is due the collector, the customhouse broker must see that the collector is paid; if any refunds occur from an entry the customhouse broker must see that they are remitted to the owner of the merchandise.

A broker may advance his fee and the duty, as an expense item, against the shipment to be collected from the consignee or may be reimbursed by other means.

A broker does not have any physical contact with the shipment; does not inspect the shipment, nor cause the same to be done; and does not release the shipment from customs custody (the collector releases the shipment when he is satisfied that the revenues of the United States are protected or collected).

A broker does not have to clear a shipment because it is consigned to him for clearance. He may refuse to do this work for anyone. A broker is not accountable to his client for the method or means of work but is accountable for the end achieved.

Speaking generally of the business of brokers rendering personal service with relation to commerce, we find in 12 Corpus Juris, page 107, this statement:

> "It is deemed that the business of brokers is transacted wholly within the state and that they are not engaged in interstate commerce, although they

negotiate sales or transactions of interstate commerce."

Petitioner (brief p. 22) states in effect that while it owes its existence as a corporation to the laws of North Dakota that its powers to do business as a licensed customhouse broker is wholly dependent upon the laws and regulations of the United States. Assuming arguendo, that such is the situation, nevertheless such regulations recognize the necessity of a customhouse broker who has a license for one district only, and who wishes to obtain a license for another district, first satisfying the Treasury Department that such broker, as a condition prerequisite, must qualify to do business in the state or states located in such additional district. (Section 1410 of Customs Regulations 1937.) This requirement is further evidenced by the letter written under the direction of the Commissioner, dated September 1, 1942, heretofore quoted in full. It is clear, therefore, that petitioner, a corporate customhouse broker, is amenable to the Minnesota Foreign Corporation Statute both under the law of Minnesota as well as under Section 1410 of the 1937 Customs Regulations.

Petitioner (brief p. 26) states that the broker does not "follow or handle the merchandising after it has been released except that if an error is discovered in the computation of the duty which warrants that he may get the shipment recalled to the custody of the collector for one or more purposes specified in the law." The recalling of shipments for such purposes is covered by Article 316 of the 1937 Customs Regulations. Petitioner infers that the customhouse broker can recall such shipments and inferentially at least that a customhouse broker has some power or jurisdiction over the move-

ment of shipments or their recall. This is not true. The only one that can order a recall of the shipment is the collector of customs and not the customhouse broker as is so clearly stated in such Article 316.

In various places in its argument, petitioner has erroneously represented to this Court that respondents converted at Noyes, Minnesota, certain business of petitioner, and that respondents changed the carrier certificates or the bills of lading. The testimony of petitioner's witness, Claude Phillips, the railway agent at Noyes, Minnesota, heretofore quoted, refutes such statement. This point is not germane to the issue but since petitioner insists on making this claim, respondents feel constrained to inform the Court as to the facts. Mr. Phillips' testimony is crystal clear to the effect that where Canadian shipments were consigned to a named broker in Noyes, Minnesota, and where there was no such broker by that name at Noyes or such designated broker was not qualified to do business at Noyes, that then the railroad agent at such port would communicate such fact to the shipper. The shipper was then requested to designate the name of a broker located at Noyes who was licensed and qualified to clear such shipment at the port of entry. Only after receiving the authorization of the shipper, the only one who could so designate the broker, were such carrier certificates or bills of lading amended or corrected not, however, by respondents, but by the railroad company acting under direct orders or authorization from the shippers. In the cases where Respondent Jensen was then so designated by the shipper, was Jensen authorized and permitted to clear shipments.

Petitioner represents, and would have this Court believe, that a customhouse broker's activities and duties are, as to the minutest details, regulated by the federal

government. It is true that a customhouse broker is licensed by the government but this is to insure that such person or corporation is competent to handle the clearance and paper work concerning shipments. The government pays him no fees nor does the government regulate or set the amount of his fees. The mere fact that the federal government licenses persons and corporations as customhouse brokers does not by any means make such licensed broker its employee or agent nor does it mean that such licensed broker who renders strictly personal service, bookkeeping and paper work in connection with interstate shipments is engaged in interstate commerce. For instance, the state of Minnesota licenses doctors, lawyers, dentists, architects, accountants, etc., and requires examinations in order that it may be ascertained that such persons are competent to render efficient service to the public requiring such service. The federal government likewise licenses various persons for various activities, including customhouse brokers. It would seem from the argument of counsel for petitioner that he has fallen in grave error in arguing that the fact of licensing of a customhouse broker by the federal government makes such broker an instrumentality or agent of the United States and that such broker is therefore engaged in interstate commerce. A customhouse broker's business is a private business, not public. He specializes in the paper work of clearing shipments because he has qualified and has made a special study of the Tariff Act and Regulations. His activities are confined to the port of entry where he has his situs or office. He has the right to refuse business and has the right to solicit business. His charges are his own affair and he may continue to act as independent contractor in clearance of shipments so long as he abides by the law and regulations appli-

cable to his business. Should a corporate customhouse broker open an office at another district, usually located in another state. It must submit itself to such state laws and comply therewith (Section 1410 of the 1937 Customs Regulations and the letter sent under direction of the Commissioner heretofore referred to). Petitioner maintains that it is above and can ignore the Minnesota Foreign Corporation law and need not abide thereby. Petitioner has seen fit to obtain a situs in Minnesota, open an office therein, transact business and yet is unwilling to obtain a certificate of authority to do business in this state. It would enjoy the fruits and benefits of its business in Minnesota but nevertheless refuse to share any of the responsibilities borne by domestic corporations or other concerns doing business within the borders of Minnesota. Because petitioner did not qualify under the Minnesota law, it can not maintain this action.

Respondents have split up their further argument herein under separate headings as hereinafter set forth.

A.

THE SOLE QUESTION BEFORE THIS COURT

The Minnesota Supreme Court, in reviewing the findings and judgment of the State District Court, considered only respondent's assignment of errors I A and D (R. p. 148, f. 735; p. 168), and reversed the State District Court on the ground that said court was in error as a matter of law in holding:

> "* * * that the customhouse brokers, involved herein, are established as federal instrumentalities and are engaged in interstate commerce in facilitating the free flow of commerce between the United States and the Dominion of Canada" (part of finding 5, R. p. 125, f. 699).

The Minnesota Supreme Court, in reversing the judgment of the District Court, did not deem it necessary to pass upon the numerous other assignments of error (R. p. 148, f. 735). Therefore, the only question, and ultimate issue in this case, as decided by the State Supreme Court, and which should only be considered by this Honorable Court, is aptly and ably expressed by the Minnesota Supreme Court thus:

> "Did the customhouse brokerage business conducted by plaintiff (petitioner herein) in a substantial way interfere with or obstruct the exercise of the granted power of Congress to regulate interstate commerce" (R. p. 152, f. 740) (9 N. W. (2d) 727).

This Honorable Court is invited to read the well written, clear, and concise opinion of the Minnesota Supreme Court, as it is apparent that the Court, engaged in exhaustive study and research. The Minnesota Supreme Court arrived at its decision by analyzing the numerous decisions of this court for the controlling principles upon which its decision rested. Justice Youngdahl said:

> "Because the determination of whether a business is interstate or intrastate commerce is so essentially a federal question, we necessarily look to the decisions of the United States Supreme Court for the broad controlling principles upon which this decision must rest" (R. p. 149, f. 737) (9 N. W. 725).

This has been the policy of the Minnesota Supreme Court, where federal questions are concerned, as evidenced by the cited case therein of Palm Vacuum Cleaner Co. v. Bjornstad, 136 Minn. 38, 161 N. W. 215.

B.

CUSTOMHOUSE BROKER'S BUSINESS AND NATURE OF SERVICE RENDERED

(1)

In view of various statements made by petitioner, and its argument concerning customhouse brokers and their activities, respondents deem it necessary to further discuss the functions and duties of customhouse brokers.

Petitioner would have this Court believe that all shipments of merchandise from Canada arriving at a port of entry in the United States can go no further until released from customs by means of the services performed by the customhouse broker (brief, pages 31, 32). Such is not the situation, as, under the Tariff Act and Regulation, shipments can be made in bond from a port of arrival to another port (Article 1411 (b), Regulations of 1937). Shipments are released, to resume their journey to destination, only on the order of the Collector.

Further, under the Tariff Act and Regulations, it is not necessary for the shipper or importer to employ the services of a customhouse broker. The owner of the shipment, his agent or employee, may clear through customs without the services of a broker (Article 1411 (a), Regulations of 1937).

Petitioner further claims that the customhouse broker is relied on by the government for protection of the public revenues (brief, page 68). Under the Tariff Act and Regulations the duties and revenue of the federal government are fully protected either by bonded shipments or by possession of the merchandise until all duties are paid by virtue of bonds whether such bonds are fur-

nished by the customhouse broker or the owners of the merchandise. It is clear, therefore, that a customhouse broker in no manner protects or conserves the revenue of the United States.

The Minnesota Supreme Court in its decision has aptly defined the duties of a customhouse broker thus:

> "Shipments of merchandise arriving at a port of entry must be declared as to contents and value, duly inspected by agents of the collector of customs at that port, and the prescribed tariff paid on dutiable items. The customhouse broker, for an agreed compensation, performs this service for the benefit of the shipper or importer of goods. He receives from the carrier the bills of lading covering the shipments and presents these, together with other documents peculiar to the business, to the collector of customs, who estimates the duty to be paid thereon. This sum is advanced by the broker for his client, the shipper. This service, of necessity, involves a working knowledge of the rules and regulations of customs law, as well as sufficient information to enable the broker to set up and maintain proper books and records in conformity with federal requirements relating to customhouse brokers. In order that a broker may be in a position to render this service to a shipper, it is first necessary that the particular shipment be consigned to a specific broker. A responsibility rests upon the common carrier of goods to deliver them to none other than the consignee named in the bill of lading. Too, unless the proper consignee presents the bill of lading to the customs officers for payment of duty, payment is refused" (R. p. 144, f. 730) (9 N. W. (2d) 722, 723).

Further, a customhouse broker is an independent contractor. The Minnesota Supreme Court was right in holding that:

> "The broker acts as an independent contractor to perform this personal service for the shipper. He

does not come into contact with the commerce itself in any way in so far as its actual movement is concerned. He is at the most an aid or facility to the commerce and but remotely, if at all, affects it. We fail to see how such broker is an instrumentality of the commerce. Therefore, it seems to us that the statutory requirement is not an obstruction or interferences with interstate commerce" (R. pp. 153, 154, f. 743) (9 N. W. (2d) 728). (Emphasis supplied.)

(2)

Customhouse Broker Is Not a Federal Instrumentality Engaged In Interstate Commerce.

Petitioner quarrels with the Minnesota Supreme Court decision which holds that Union Brokerage Company, petitioner herein, is not engaged in interstate commerce; that petitioner is not an instrumentality employed to protect the revenue of the United States; and an aid in the free flow of foreign commerce.

The Minnesota Supreme Court held that petitioner was an independent contractor, rendering personal services within the confines of the state of Minnesota; that petitioner was engaged in intrastate commerce for profit; and that the activities of petitioner in relation to interstate commerce were only remote and would not encroach substantially thereon (R. pp. 153, 154, f. 743). The Minnesota Supreme Court held further that the Minnesota Statutes requiring foreign corporations doing business in the state to first obtain certificates of authority. This is a reasonable requirement as applied to foreign corporations doing business in Minnesota. The failure of petitioner herein to first procure such certificate precludes it from maintaining this action.

Respondents, in such Minnesota Supreme Court case, contended that the State District Court committed error

in holding that petitioner was a federal instrumentality engaged in commerce. Respondents maintained that the business of petitioner was purely local and intrastate in character, and, that if it affected interstate commerce at all, it did so remotely and indirectly, and that petitioner was, therefore, subject to the provisions of the Minnesota Foreign Corporation Act. This position and contention of respondents was upheld by the Minnesota Supreme Court.

The Minnesota Supreme Court in deciding that petitioner was not a federal instrumentality nor engaged in interstate commerce, said:

> "In applying this principle so recently enunciated by the Supreme Court of the United States to the facts here presented, it is necessary to consider the character of the business in which plaintiff was engaged. Customhouse brokers are not public officers but perform purely personal services as agents of the shippers. Duluth, S. S. & A. Ry. Co. v. Wilson, 200 Mich. 313, 167 N. W. 55; People ex rel. Tower v. State Tax Comm., 282 N. Y. 407, 26 N. E. (2d) 955; State v. Wm. J. Oberle, Inc., 190 La. 1053, 183 So. 347. True, under the Tariff Act customhouse brokers are required to be licensed in order to do business, but the sole purpose of that requirement is to protect the collection of tariffs due the federal government. State v. Wm. J. Oberle, Inc., supra. The office of plaintiff was situated in Noyes, Minnesota, and all of its records pertaining to that business were kept there. The business was transacted entirely within the borders of this state. It had nothing whatever to do with the actual importation or exportation of articles of commerce. Its duty as an agent of the shipper was merely to pay the customs duties and make settlement subsequently with its principal, the shipper. Customhouse brokers represent private persons. They receive no fees or emoluments from the federal government. A customhouse broker's license authorizes the holder to transact

business in certain customs collection districts. He cannot represent a claimant before the treasury department unless enrolled as attorney or agent in conformity with the requirements of the department. We think this quite far removed from being an agent of the United States, or being engaged in a governmental function. It is urged that because the customhouse broker pays the duties he has a direct and substantial connection with the commerce; that the commerce would be delayed if the duties were not paid. It must be borne in mind, however, that under the Tariff Act the shipper himself or his agent can perform this service. Article 1411, Customs Regulations of 1937, provides in part: '(a) An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.' The broker acts as an independent contractor to perform this personal service for the shipper. He does not come into contact with the commerce itself in any way in so far as its actual movement is concerned. He is at most an aid or facility to the commerce and but remotely, if at all, affects it. We fail to see how such broker is an instrumentality of the commerce. Therefore, it seems to us that the statutory requirement is not an obstruction or interference with interstate commerce" (R. pp. 152, 153, 154, ff. 741, 742) (9 N. W. (2d) 727, 728).

A case cited and quoted in the Minnesota Supreme Court decision is State v. Wm. J. Oberle, Inc., 190 La. 1053, 183 So. 347.

In that case the state of Louisiana attempted to impose a state occupational tax on a customhouse broker, Wm. J. Oberle, Inc. The action was brought to compel the defendant customhouse broker at New Orleans to pay such occupational license tax based upon the broker's receipts from importers. The state contended that the

defendant was engaged in a purely private business and was subject to such general occupational tax. The defendant customhouse broker asserted that it was duly licensed by the Secretary of Treasury of the United States and could not be subjected to any occupational license tax as same would unconstitutionally burden a purely federal and quasi federal function and would interfere with the commerce laws of the United States. The lower state court held for the defendant customhouse broker on the ground that said state occupational tax law was unconstitutional in so far as same applied to customhouse brokers. The state appealed from this judgment, and Louisiana Supreme Court reversed, holding that a customhouse broker was subject to the Louisiana occupational tax. The Louisiana Supreme Court, in so holding, discusses very ably the activities of customhouse brokers, its relation, if any, to the interstate commerce, and the reason such occupational tax was valid as applied to customhouse brokers. That Court said:

> "(1) It is true that defendant is a customhouse broker, duly licensed by the Secretary of the Treasury of the United States under Section 641 of Article 1391 of the Tariff Act of 1930 (Transcript, p. 3).
>
> 1. But we fail to find any provision in the Tariff Act of 1930 to the effect that customhouse brokers are agents of the national government, discharging governmental functions.
>
> To the contrary, the Treasury Department defines a customhouse broker as including 'all persons, partnerships, corporations, and associations transacting customs business at a customhouse in behalf of others generally.' Art. 1392 of Tariff Act of 1930 (Transcript, p. 7).

Customhouse brokers represent private persons. They receive no fees or emoluments from the United States government, as testified by the president of defendant (Transcript, pp. 26, 27).

A customhouse broker's license only authorizes the holder to transact business in customs collection districts. They cannot represent a claimant before the Treasury Department, unless enrolled as attorney or agent in conformity with the requirements of the department (Department Circular No. 230, Treasury Department 42773). Arts. 1402 and 1403 of Tariff Act of 1930 (Transcript, pp. 13, 14). This is very far from being an agent of the United States, or being engaged in a governmental function. They are no more discharging governmental functions than are the lawyers licensed to represent their clients before the Treasury Department (Art. 1403, Transcript, p. 14). At the most, customhouse brokers are independent contractors, pursuing a private business for profit, and the fact that their occupation is regulated by law does not make those engaged therein government officials, or result in immunity from taxation.

In Federal Compress & Warehouse Co. v. McLean, 291 U. S. 17, 54 S. Ct. 267, 269, 78 L. Ed. 622, the Supreme Court of the United States said:

> 'Appellant's license under the United States Warehouse Act did not confer upon it immunity from state taxation, for neither the appellant nor its business was, by force of the license, converted into an agency or instrumentality of the federal government. The Warehouse Act (7 U. S. C. A. No. 241, et seq.) confers upon licensees certain privileges and secures to the national government by means of the licensing provisions, a measure of control over those engaged in the business of storing agricultural products who find it advantageous to apply for the license. The government exercises that control in the furtherance

of a governmental purpose to secure fair and uniform business practices. But the appellant, in the enjoyment of the privilege, is engaged in its own behalf, not the government's, in the conduct of a private business for profit. It can no longer be thought that the enjoyment of a privilege conferred by either the national or a state government upon the individual, even though to promote some governmental policy, relieves him from the taxation by the other of his property or business used or carried on in the enjoyment of the privilege or of the profits derived from it. Susquehanna Power Company v. State Tax Commission, 283 U. S. 291, 51 S. Ct. 434, 75 L. Ed. 1042; Fox Film Corporation v. Doyal, 286 U. S. 123, 52 S. Ct. 546, 76 L. Ed. 1010; Broad River Power Company v. Query, 288 U. S. 178, 180, 53 S. Ct. 326, 77 L. Ed. 685.'

. . . . . .

'The mere extension of control over a business by the national government does not withdraw it from a local tax which presents no obstacle to the execution of the national policy. Compare Susquehanna Power Co. v. State Tax Commission, supra; Broad River Power Company v. Query, supra. See Willcutts v. Bunn, 282 U. S. 216, 226, 230, 51 S. Ct. 125, 75 L. Ed. 304 (71 A. L. R. 1260).'

It is clear from the above decision that the mere extension of control over the business of customhouse broker by the national government does not withdraw it from a local tax, as defendant, in the enjoyment of the privilege under its license, is engaged in its own behalf, and not in behalf of the government, in the conduct of a private business for profit.

As the local tax claimed by the state in this case does not impose a burden upon a federal function, it presents no obstacle to the national policy in the control and administration by the government of its customs. Obviously, the concern of the government

is to see that the proper duties are collected, and the licensing of competent customhouse brokers is merely in promotion of the governmental policy. But neither the defendant, nor its business of customhouse broker, was, by the force of the license, converted into an agency or instrumentality of the federal government.

2. (2) We fail to see wherein the occupational license tax to which the state seeks to subject defendant, as a customhouse broker, would interfere 'with the commerce laws of the United States and particularly the importation and exportation of commerce,' as contended by defendant. The evidence fails to show that defendant is engaged in either. Defendant received its business from importers of merchandise, private persons (Transcript, pp. 26, 27). Defendant is not itself an importer of merchandise. If it were, it would not be licensed as a customhouse broker" (183 So. 347, 348).

One of the very few cases concerning the question as to whether or not a customhouse broker is a federal employee or agent or a federal instrumentality, is the case of Duluth, S. S. & A. R. Co. v. Wilson, 200 Mich. 313, 167 N. W. 55, L. R. A. 1918 E, 763 (cited in the Minnesota Supreme Court decision). That Court said:

"'He (customhouse broker) is invested with no part of the sovereign functions of the government. He is the agent of the importer, and deals with the government in that capacity. Moreover, his duties are not analogous to those of an executor or administrator. * * * He may act for whom and so far as he pleases. The license merely gives him the privilege of entering the goods for those who choose to employ him and for whom he chooses to perform such service.

* * * * *

> **" 'The character of the employment of a customhouse broker is private, as distinguished from public. His intervention is not necessary in the importation of goods.** The importer may make his own entry, or may employ any broker who has a license. The broker is paid by the importer, and is, as a matter of fact, his agent for the single transaction of entry. He performs no duties on behalf of the public, and the public is not concerned about his fees. **There are no considerations of public policy intervening which would affect the disposition of his earnings. His services stand upon no other basis than any other private employment.' "** (Emphasis supplied.)

The Minnesota Supreme Court decision also cited the New York case of People ex rel. Tower v. State Tax Comm., 282 N. Y. 407, 26 N. E. (2d) 955. In that case the state of New York enacted a so-called unincorporated business tax law upon various types of noncorporate enterprises competing with corporations in the state which are required to pay a corporate franchise tax measured by net income. That law exempted professions from its application. C. J. Tower & Sons was a partnership consisting of three partners devoting all their time to partnership affairs. It was held that the three partners were not practicing a profession within the meaning of the statute, and that, said partnership could have incorporated as such and transacted business as a customhouse broker. In such case, although the court did not make a direct finding that customhouse brokers are or are not engaged in interstate commerce, such court calls attention to the fact that the nature of the business is that of rendering personal service to patrons, importers, and exporters. It is clear, of course, that were customhouse brokers engaged in interstate commerce, or substantially so engaged, such broker

would not be subjected to the franchise tax of the state of New York.

A case very analogous to this case is that of Hopkins, et al., v. U. S., 171 U. S. 578, 43 L. Ed. 290, 19 S. Ct. 40. In that case Hopkins, et al., were engaged in the commercial business dealing in livestock in stockyards in Kansas City, Missouri, such stock being shipped from various states and to various states. Hopkins, et al., had agreed upon uniform rates to be charged for their services and the work performed was in the nature of personal service association. The question of whether or not Hopkins, et al., had attempted to restrain trade and commerce among the several states directly raised the question as to whether or not the said Hopkins, et al., were engaged in interstate commerce. In that case this Honorable Court delves deeply into the question as to what constitutes interstate commerce, and when such firm or person is subject to state laws, or beyond the operation of state laws, and, therefore, subject to federal law concerning interstate commerce and restraint of trade. Inasmuch as Hopkins, et al., were livestock brokers or agents engaged in performing personal service in connection with interstate commerce, which services, however, are merely collateral to interstate commerce.

This Honorable Court in holding that Hopkins, et al., livestock brokers, were engaged in purely local intrastate services, said:

> "On the contrary, we regard the services as collateral to such commerce, and in the nature of a local aid or facility provided for the cattle owner towards the accomplishment of his purpose to sell them; and an agreement among those who render the services, relating to the terms upon which they will render them, is not a contract in restraint of interstate trade or commerce."

This Court further said:

> **"The charges of the agent on account of his services are nothing more than charges for aids or facilities furnished the owner, whereby his object may be the more easily and readily accomplished. Charges for the transportation of cattle between different states are charges for doing something which is one of the forms of, and which itself constitutes, interstate trade or commerce, while charges or commissions based upon services performed for the owner in effecting the sale of the cattle are not directly connected with, as forming part of, interstate commerce, although the cattle may have come from another state. Charges for services of this nature do not immediately touch or act upon, nor do they directly affect, the subject of the transportation.** Indirectly, and as an incident, they may enhance the cost to the owner of the cattle in finding a market, or they may add to the price paid by a purchaser, but they are not charges which are directly laid upon the article in the course of transportation, and which are charges upon the commerce itself. They are charges for the facilities given or provided the owner in the course of the movement from the home situs of the article to the place and point where it is sold." (Emphasis supplied.)

In the case of Blumenstock Bros. Adv. Agency v. Curtis Publishing Co. (252 U. S. 436), it was held that a business conduced by an advertising agency of placing, by contracts with publishers, advertisements for manufacturers and merchants, in magazines which are published and distributed throughout the United States, is not interstate commerce, although the circulation and distribution of publications themselves be such. It is held in the case of Parkersburg & O. River Transp. Co. v. Parkersburg (107 U. S. 691), that although wharves are related to commerce and navigation as acts and conveniences, yet being local in their nature, and requiring

special regulations at particular places, the jurisdiction and control thereof, in the absence of congressional legislation on the subject, properly belong to the states in which they are situated.

In the case of Hooper v. People of the State of California, 155 U. S. 648, 15 S. Ct. 207, it was held by this court that the business of marine insurance, like any other insurance business, is not commerce or an instrumentality thereof, but merely an incident thereto and therefore, the constitutional provision as to interstate commerce did not prevent a state from prescribing conditions upon which foreign insurance company may do business in the state or from enforcing such conditions.

In 12 Corpus Juris, page 35, Sec. 36 (9), it is stated:

> "The business conducted by brokers, and commercial merchants, or of exchanges of which they may be members, is not interstate commerce."

The work of a customhouse broker consists mainly in bookkeeping and paper work. It was held in Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 32 Sup. Ct. Rep. 436, that bookkeeping is not interstate commerce. The amount of the broker's fees are not set or regulated by the federal government. Petitioner's witness, Mr. Mackay testified:

> "* * * the collector has nothing to do with fees. Fees are a matter of agreement between the broker and his client; there are no set fees" (R. p. 115, f. 581).

From foregoing leading cases on the subject, it is clear that customhouse brokers are not federal employees, agents or instrumentalities; that their duties are purely personal in nature rendered at the port of entry where their business is situated, and, that if their activities affected interstate or foreign commerce, it did so but remotely.

C.

CUSTOM REGULATION AND RULING RECOGNIZES THE LOCAL AND INTRASTATE CHARACTER OF THE BUSINESS OF CUSTOM-HOUSE BROKERS

In scrutinizing the Tariff Act, particularly with reference to customhouse brokers, and the regulations promulgated by the Secretary of Treasury pursuant thereto, we find only one regulation which touches upon, and, which aids and assists in the interpretation which the federal government itself places upon the character and nature of the business of customhouse brokers. This regulation is Article 1410, Customs Regulations of 1937, in part, is as follows:

> "However, a licensee having a license in force in one district may on application to the committee be granted a license to transact business in another district without further examination, **provided it appears on investigation that the licensee is authorized to do business in the state or states in which such other district is situated,** and is prepared and qualified to render efficient service in such other district." (Emphasis supplied.)

Here the federal government expressly makes it a condition precedent for a broker who has a license in one district, and who desires to operate in another district, without further examination, to first satisfy the federal government that it has complied with the requirement that said broker "is authorized to do business in the state or states in which such other district is situated."

The Minnesota Supreme Court, in the decision involved herein, states that the United States Treasury Department has thereby placed a practical construction on the

character of the customhouse brokerage business as affecting commerce, by saying:

> "Subsequent to the adoption of this regulation, congress amended the tariff act in several respects, although the provisions governing customhouse brokers have remained substantially the same. By such regulation the treasury department has placed a practical construction on the character of the customhouse brokerage business as affecting commerce. It infers that it was the opinion of the treasury department that the statutory provision requiring a certificate of authority from a foreign corporation, as relating to such business, did not encroach upon interstate commerce. The provision that brokers may qualify to do business in more than one district, provided they are authorized to do business in the particular states in which such other districts are located, definitely implies that the department considers such business truly local and intrastate; and surely, if the business is intrastate when operated in two or more districts, it is equally intrastate when operated in a single district. Inasmuch as the tariff act was revised subsequent to the regulatory provision referred to without modifying this provision 'under the established rule Congress must be taken to have approved the administrative construction and thereby to have given it the force of law.' Helvering v. R. J. Reynolds Tobacco Co., 306 U. S. 110, 115" (R. p. 156, f. 746) (9 N. W. (2d) 729).

Undoubtedly, the Commissioner of the Bureau of Customs recognizes the necessity of a customhouse broker complying with state laws and such compliance is entirely a matter between the broker and the state authority. In the early part of this brief such letter of instruction bearing date of September 1, 1942, addressed to Respondent Jensen herein is quoted in full but it is deemed advisable to again quote the salient part of the letter of instruction as follows:

"The holder of a customhouse broker's license is authorized to transact customhouse brokerage business at any port in the district in which the license is issued, so far as the customs laws and regulations are concerned. Compliance with state laws in the customs district covered by a license already in force is entirely a matter between the broker and authorities of the particular state involved.

By direction of the Commissioner:"

The practical construction and interpretation of a regulation or statute by the department charged with administration of duties pursuant thereto through a period of time bears great weight and such interpretation and construction will not be set aside or overturned unless clearly wrong. In the case of Swendig v. Washington Water Power Co., 265 U. S. 322, this Honorable Court with reference to the force and effect of Regulations, said:

"The regulation is still in effect. The construction and application of the act so made and provided for have been followed since that time. If the meaning of the act were not otherwise plain, this interpretation would be a useful guide to the ascertainment of the legislative intention. It is a 'settled rule that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons.' Logan v. Davis, 233 U. S. 613, 627."

Further in the case of United States v. Jackson, 280 U. S. 183, the Court on page 193, said:

"It is a familiar rule of statutory construction that great weight is properly to be given to the construction consistently given to a statute by the executive department charged with its administra-

tion (cases cited); and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required."

In the case of Aldridge v. Williams, 3 How. 9, 11 L. Ed. 469, it was held that any regulation within the authority given to the Undersecretary of Treasury by the act of 1832 are regulations prescribed by law.

It is clear that a customhouse broker is not the owner of the merchandise cleared through customs; that he does not direct nor control the buying, the selling nor routing of such shipment, and he at no time has physical contact with the merchandise. His services are strictly personal in nature, and are performed at such port of entry within the confines of the state wherein he operates. His business, therefore, is local and intrastate in character and private in character.

D.

THE MINNESOTA FOREIGN CORPORATION STATUTE IS A REASONABLE REGULATION AND REQUIREMENT, AND IS NOT AN OBSTRUCTION UPON INTERSTATE COMMERCE NOR INTERFERENCE THEREWITH

This court, no doubt, will read in its entirety the Minnesota Supreme Court case which petitioner seeks to have this Honorable Court reverse. The Minnesota Supreme Court has rendered a distinct service in so ably and carefully reviewing and analyzing the question here involved concerning the character of the business of a customhouse broker as applied to the commerce clause, and, has further arrived at the conclusion that the Minnesota Foreign Corporation Act is reasonable, and is not a "burden" upon commerce, nor an "obstruction," nor an "interference" therewith.

The Minnesota Supreme Court in so holding, said:

"While it is our duty fully to recognize this most recent trend in the construction of the commerce clause by the Supreme Court of the United States, we are unable to find, even in these recent decisions, any inclination on the court's part to interfere in purely local and intrastate matters. It is entirely consistent with these decisions and in harmony therewith for the courts, when confronted by varying factual situations involving the commerce clause, to preserve whenever possible that fine balance between national and state solidarity which has been characteristic of our government during its century and a half of existence. Where congress has not stepped into the field of regulation because of the fact that some national public policy or concern is not involved, and where the business, as here, is local in character, relates only to personal services, is conducted for private profit, and is not an instrumentality of commerce, the courts should be loathe to suggest that the state cannot enforce a reasonable regulation for the benefit of its citizens such as the statute here in question. The provisions of this statute require foreign corporations to obtain a certificate of authority as a prerequisite to maintaining an action in the courts of this state. We believe that this is a reasonable requirement, and not a hardship upon the business. Nor do we think that it is an obstruction upon the commerce itself nor an interference therewith under the facts in the instant case. On the other hand, it is a protection to the people of this state in providing for them a method for the service of process upon a foreign corporation without the necessity of going into a foreign jurisdiction to secure relief. Where the business so remotely affects the commerce, if at all, we conclude that the statutory requirement is a proper regulation for the state to prescribe, and that the constitutional power of congress is in no way impaired thereby" (R. pp. 157, 158, ff. 747-748) (9 N. W. (2d) 729, 730).

The reasonable requirements of the Minnesota Foreign Corporation Statute as applied to petitioner herein, a North Dakota corporation, to first obtain a certificate of authority to do business in the state of Minnesota before it could maintain this action, does not and can not interfere with the governmental functions of the federal government. The United States has suffered no loss in this case as a result of the customhouse brokerage business conducted by all parties hereto and neither has interstate commerce in any degree been obstructed, burdened or interfered with because petitioner did not qualify under the Minnesota Foreign Corporation Statute. The Tariff Act and Regulation promulgated pursuant thereto were never questioned nor were they construed by the trial court. Surely the compliance by the petitioner with the Minnesota Foreign Corporation Statute would have created no greater burden upon petitioner than upon Minnesota domestic corporations. The Minnesota Foreign Corporation Statute is but a reasonable requirement and can not and does not interfere with federal governmental functions. It is important to preserve the respective functional duties of the state as well as those of the federal government.

This court stated in the case of James V. Dravo Contracting Co., 302 U. S. 134 (page 148 thereof) as follows:

> "The possible importance of reserving to the state jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired."

In the case of State Tax Commission v. General Trading Co., 10 N. W. (2d) 659, the Iowa Supreme Court in upholding the right of the state of Iowa to impose and

collect a use tax against a Minnesota corporation on retail sales made by traveling salesmen in Iowa but which concern had no place of business or agent located in Iowa, on page 664, said:

> "By compelling defendant to collect and pay the use tax, the tax commission seeks to compel defendant to operate on an equality with the retailers in Iowa who, as a part of their business operations, collect and pay the retail sales tax on all sales made by them. The justice of such equality undoubtedly accounts in large measure for the liberality of the court in undertaking to sustain use tax statutes. This liberality has necessitated considerable reorientation in this field of constitutional law. Much of the argument of counsel would be quite persuasive and convincing had the U. S. Supreme Court adopted the dissenting opinion in the Sears Roebuck case, written by Justice Roberts, with whom Chief Justice Hughes concurred. But the court determined otherwise. A precedent has been established which we are bound to follow."

The Minnesota Foreign Corporation Statute lays no direct burden, obstruction or interference with the collection of duties or on governmental functions with respect to the Tariff Act. Where a state law does not substantially interfere with or burden the federal government under many decisions of this court, the principle is recognized that the state may enforce its laws and requirements even though such laws may in a collateral, indirect or remote degree affect interstate commerce. This principal is further exemplified by the cases of Fox Film Corporation v. Doyal, 286 U. S. 123, 52 Sup. Ct. 546, 76 L. Ed. 1010; Thomson v. Union Pacific Railway Co., 9 Wal. 579, 19 L. Ed. 192; Trinity—Farm Construction Co. v. Grosjean, 291 U. S. 466, 54 S. Ct. 469; Appeal of City of Dubuque, 5 N. W. (2d) 334.

The Minnesota Supreme Court decision is clearly right in its holding that the Minnesota Statutory requirement that petitioner must first obtain a certificate of authority to do business in the state before it can maintain this action, is a proper and reasonable state regulation "and that the constitutional power of congress is in no way impaired thereby" (R. p. 158, f. 747) (9 N. W. (2d) 730).

E.

A CUSTOMHOUSE BROKER DOES NOT AFFECT OR PROTECT THE PUBLIC REVENUE

Respondents fail to see why this case, in any degree whatsoever, is important to the federal government or the Department of Treasury. No claim has been made in the trial of the case in the lower court, or in the appeal to the Minnesota Supreme Court, that the public revenue in any way, shape, or manner is or was jeopardized. The United States government has not lost one cent on account of the customhouse broker activities of petitioner or respondents. The federal government by virtue of the Tariff Act and the regulations is fully protected in the collection of duties, as provided by law, and as heretofore set forth, through the medium of required bonds, the custody of shipments until the duty is paid, etc. None of the provisions of the Tariff Act nor of the regulations, nor the construction of the same, are involved in this controversy. The sole and only question is whether or not the state of Minnesota has the power to require a foreign corporation, before it can engage in business in the state of Minnesota, and have use of its courts, as a condition precedent thereto, to require such foreign corporation to first qualify under such state law, pay the franchise tax equal to that of domestic corporations, and

appoint a resident agent upon whom service of process might be made. Had petitioner obeyed the law of the state of Minnesota, it would have had the same privileges as are afforded domestic corporations. The Minnesota Supreme Court holds that a customhouse broker is neither a federal instrumentality nor engaged substantially in interstate commerce, and that such foreign corporation, the petitioner herein, is not immune or above the Minnesota State Law requiring compliance with its Foreign Corporation Statute.

The record clearly discloses that at no time in this case was the construction of the Tariff Act, Regulations, any other federal law, treaty or constitution, questioned. Such act and all regulations promulgated pursuant thereto were accepted without question by petitioner and respondents, the State District Court, and Supreme Court of the state of Minnesota. There is, therefore, no question of construction presented to this Court.

The only issue decided by the Minnesota Supreme Court, which petitioner is now requesting this court to be reviewed, is whether or not petitioner, Union Brokerage Company, a North Dakota Corporation, in order to legally function as an incorporated customhouse broker in the state of Minnesota, must first qualify under the Minnesota Foreign Corporation Act before it can transact customhouse brokerage business in the state and have the privilege of maintaining actions in the Minnesota courts. The regulations expressly provide that a licensed customhouse broker licensed to do business in one district may transact business in another district, without further examination, "provided it appears on investigation that the licensee is authorized to do business in the state or states in which such other district is situated, and is

prepared and qualified to render efficient service in such other district." (Article 1410, Customs Regulations of 1937). (Emphasis supplied.)

This, it is submitted, is conclusive as to the issue involved.

CONCLUSION

Petitioner attacks and would have this Honorable Court reverse the clear and concise decision of the Minnesota Supreme Court. The enlightening and able opinion of Justice Youngdahl does not conflict with decisions of this court but on the other hand harmonizes therewith and with the Tariff Act and the Regulations. This case does not affect the public revenue. It is a case purely concerning the application of the Minnesota Foreign Corporation Statute as affecting corporate customhouse brokers such as petitioner who have set up, maintained and operated its business within Minnesota boundaries. The sole and ultimate question for this Court is the simple one of whether or not petitioner's customhouse brokerage business in a substantial way interfered with or obstructed the exercise of the granted power of congress to regulate interstate commerce. The Minnesota Supreme Court rightfully held that petitioner, in failing to comply with the reasonable requirements of the Minnesota Foreign Corporations Statute, could not maintain this action in any of the Minnesota courts.

This Honorable Court has recognized in many of its decisions that there are distinctions and limitations between interstate commerce or an instrumentality on one side, and on the other, mere incidents which may attend the carrying on of such commerce and which do not substantially affect, burden, obstruct nor interfere with interstate commerce. Surely the reasonable requirement of

the Minnesota Foreign Corporation Act, that petitioner qualify thereunder, has no bearing, direct or indirect, upon interstate commerce, the movement of foreign or interstate shipments nor the payment of duties.

The Minnesota Supreme Court decision followed this criterion and has harmonized its decision upon the distinctions and principles laid down by this Honorable Court.

Wherefore, respondents pray that the Minnesota Supreme Court decision be in all things sustained.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 291.—October Term, 1943.

Union Brokerage Company, Petitioner, vs. Norman G. Jensen and Curtis M. Rime. } On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[May 8, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is a suit brought in one of the lower courts of Minnesota by the Union Brokerage Company against Jensen and Rime for breach of fiduciary obligations in relation to Union's business, that of customhouse brokerage. The only defense to the suit with which we are concerned is the alleged disability of Union to resort to Minnesota's courts for want of compliance with her laws governing the transaction of business in the State as a foreign corporation. Minn. L. 1935, c. 200, Minn. Stat. 1941, c. 303. The Supreme Court of Minnesota sustained this defense, reversed the judgment in favor of the petitioner, and ordered the suit dismissed. 215 Minn. 207. We brought the case here to determine the important question whether enforcement of the Minnesota Foreign Corporation Act in this situation runs counter to federal law pertaining to customhouse brokers or is barred by the Commerce Clause. 320 U. S. 724.

Another claim that state authority must yield to controlling federal authority over interstate and foreign commerce is thus presented. It becomes necessary therefore to ascertain precisely what demand the State has here made, in relation to what transactions or activity it is making such demand, in what way federal authority has regulated such transactions or activity, and, finally, whether the Commerce Clause by its own force, in case federal law has not actually taken control, excludes the State from the exercise of the power it has here asserted.

For many years the petitioner, a North Dakota corporation, conducted a customhouse brokerage business at Portal, North Dakota, a port of entry from Canada by way of the Canadian Pacific Railway. In July, 1940, the Canadian Pacific re-routed most of its

shipments whereby they no longer entered the United States through Portal, but came through Noyes, Minnesota, with the result that more than 90% of Union's business was diverted from Portal. After November, 1940, at which time respondent Jensen resigned as officer of Union under circumstances giving rise to this suit, Union began to do business at Noyes and was doing business in Minnesota when it brought this suit. We shall outline the nature of this customhouse brokerage business only so far as is relevant to a consideration of our problem.

On goods shipped from Canada into this country the consignee of imported merchandise must "make entry" of them at the office of the collector of customs at Noyes either in person or by an authorized agent, and this must be done within forty-eight hours of the report of the vehicle which carried the goods unless the collector extends the time. Tariff Act of 1930, 46 Stat. 590, 722, 52 Stat. 1083, 19 U. S. C. § 1484(a). To make entry, the contents and value of the shipment must be declared and the tariff estimated, and the production of a certified invoice and a bill of lading is generally required. 19 U. S. C. § 1484(b)(c)(e)(g). Speed in making entry is vital, because goods cannot proceed to their ultimate destination until its completion. Apart from the fact that importers cannot always or even often make entries in person, the procedure makes demands upon skill and experience. The specialist in these services is the customhouse broker. In addition, he advances the duty in order that the goods may be cleared. 19 U. S. C. § 1505. The competence of the broker also bears on the efficient collection of customs duties in that the likelihood of additional assessment or refund after final determination of the duty is greatly lessened by accuracy in the tentative computation. But since errors and differences of opinion are inevitable, to insure collection of deficiencies the Government requires a bond prior to release. 19 U. S. C. § 1499; 19 Code Fed. Reg. § 6.27.

The business of customhouse brokers, it is apparent, demands a sense of responsibility and skill. To protect importers as well as the Treasury, Congress has authorized the Secretary of the Treasury to "prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition to the granting of any license the showing of such facts as he may deem advisable as to

the qualifications of the applicant to render valuable service to importers and exporters." 46 Stat. 759, 19 U. S. C. § 1641(a). Elaborate regulations define the investigation to be made of the character and reputation of the applicant and his experience in customs matters. 31A Code Fed. Reg. § 11.3(b). The applicant is then directed to appear before an examining subcommittee which determines the "applicant's knowledge of customs law and procedure and his fitness to render valuable service to importers and exporters." 31A Code Fed. Reg. § 11.3(e)(f). On approval of a favorable report of the sub-committee by the Committee on Enrollment and Disbarment of the Treasury Department, a license issues. 31A Code Fed. Reg. §§ 11.3(f)(g), 11.4. "A licensed customhouse broker requires no further enrollment under the regulations in this part for the transaction, within the customs districts in which he is licensed, of any business relating specifically to the importation or exportation of merchandise under customs or internal-revenue laws." 31A Code Fed. Reg. § 11.5.

Union's license authorizes it to do business in District No. 34 which embraces both Portal, North Dakota, and Noyes, Minnesota. 19 Code Fed. Reg. § 1.2. The regulations require it to keep records of its financial transactions as customhouse broker, and its books and papers must be kept on file available for at least five years. 31A Code Fed. Reg. § 11.8. Business relations with those who have been denied a license because of moral turpitude or those whose license has been revoked are prohibited, and the licensee is under a duty not to promote evasion of obligations to the Government. Prompt payment and accounting of funds due to the Government or his client are required of the broker, and responsible and ethical conduct is generally enjoined. 31A Code Fed. Reg. § 11.9.

Does this scheme of federal regulation of the business of customhouse brokers preclude the requirement of Minnesota legislation which the Supreme Court of that State has enforced against Union? This brings us to a consideration of the precise demand against which Union protests. Minnesota has not singled out the customhouse brokerage business for legislation nor has she made requirements of foreign corporations doing customhouse brokerage business. What is in controversy is the applicability of a general law of Minnesota dealing with all foreign corporations. More specifically, § 20 of the Minnesota Foreign Corporation Act

requires a certificate of any foreign corporation doing business in the State as a prerequisite for maintaining an action in a court of that State. In addition a filing fee of five dollars and initial license fee of fifty dollars is exacted on making application for a certificate of authority. §§ 21(a)(1), 6. Such an application must contain the name of the corporation, its home state or country, the address of its principal office and that of its proposed registered office in Minnesota, the names and addresses of its directors and officers, a statement of its aggregate number of authorized shares and kindred information. § 5. The applicant must furthermore consent to the service of process upon it and appoint an agent upon whom service can be made, and in lieu of such appointment or if the agent cannot be found, service may be made upon the Secretary of State. §§ 5(6), 13(a)(2). A foreign corporation doing business in Minnesota without a certificate of authority is subject to a penalty not exceeding $1,000 and "an additional penalty not exceeding $100.00 for each month or fraction thereof during which it shall continue to transact business in this state without a certificate of authority therefor." § 20(c). Having obtained such a certificate, the corporation is required to file annual reports on the basis of which an annual fee is assessed. The measure of the fee is substantially the same as that set for domestic corporations but in its computation the property and gross receipts of a foreign corporation are allocated between those derived from within and those derived from without Minnesota and credit is given for the latter. § 15; cf. Minn. L. 1935, c. 230, § 2.

We have before us only one narrow aspect of this Minnesota legislation, namely the power of Minnesota to deny to Union access to its courts because it has not obtained a certificate required of all foreign corporations doing business in the State. We have not before us the taxing power of Minnesota over such a business as that of Union, for we do not know the extent or nature of the power to tax that Minnesota would claim against Union.

Of course Minnesota could not deny access to its courts to Union merely because it is engaged in the customs brokerage business. See *Second Employers' Liability Cases*, 223 U. S. 1, and *Douglas v. New Haven R. Co.*, 279 U. S. 377. But the limited and defined control which federal authority has thus far seen fit to assert over customhouse brokers does not deny to Minnesota the power to subject Union to the same demand which it makes of all other foreign

corporations seeking the facilities of Minnesota's courts. The federal requirements and this state requirement can move freely within the orbits of their respective purposes without impinging upon one another. The federal regulations are concerned solely with the relations of the customhouse broker to the United States and to the importer and exporter. The limited federal supervision of the financial activities of Union is restricted to these federal interests. Such supervision does not touch the interest of the State in the protection of those who have other dealings with Union, and therefore does not preempt appropriate means for their protection.

In a situation like the present, where an enterprise touches different and not common interests between Nation and State, our task is that of harmonizing these interests without sacrificing either. The proper attitude of mind for making such an accommodation is illustrated by *Federal Compress Co.* v. *McLean*, 291 U. S. 17. The Tariff Act of 1930 in this case, as the Warehousing Act in that case, confers upon licensees certain privileges, and secures to the Federal Government by means of these licensing provisions a measure of control over those engaged in the customhouse brokerage business. But such circumscribed control by the Federal Government does not imply immunity from control by the State within the sphere of its special interests. "The government exercises that control in the furtherance of a governmental purpose to secure fair and uniform business practices. But the appellant, in the enjoyment of the privilege, is engaged in its own behalf, not the government's, in the conduct of a private business for profit." *Federal Compress Co.* v. *McLean*, *supra* at 22-23. The state and federal regulations here applicable have their separate spheres of operation. The Federal Government has dealt with the manner in which customhouse brokerage is carried on. Minnesota, however, is legitimately concerned with safeguarding the interests of its own people in business dealings with corporations not of its own chartering but who do business within its borders. Union's business is localized in Minnesota, it buys materials and services from people in that State, it enters into business relationships, as this case, a suit against its former president, illustrates, wholly outside of the arrangements it makes with importers or exporters. To safeguard responsibility in all such dealings, dealings quite

outside transactions immediately connected with import and export, Minnesota has made the same exactions of Union as of every other foreign corporation engaged in similar transactions. The Federal Government has recognized that there is such a proper field for state regulation complementary to federal regulation, for the Treasury has provided that "a licensee having a license in force in one district may on application to the Committee be granted a license to transact business in another district without further examination, provided it appears on investigation that the licensee is authorized to do business in the State or States in which such other district is situated". 31A Code Fed. Reg. § 11.6. Those who are responsible for protecting the interests of the revenue as well as of commerce have thus given emphatic indication that a State has a legitimate interest in the regulation of those engaged in the brokerage business within its borders. Where the Government has provided for collaboration the courts should not find conflict. See *Savage* v. *Jones*, 225 U. S. 501, and *Kelly* v. *Washington*, 302 U. S. 1.

This brings us to the final question. Does the Minnesota legislation do that which the Commerce Clause was designed to prevent—does it express hostility toward those engaged in foreign commerce or practically obstruct its conduct? What we have said makes it abundantly clear that the business of Union is related to the process of foreign commerce. As the trial court found, the customhouse broker in clearing the shipments, "aids in the collection of customs duties and facilitates the free flow of commerce between a foreign country and the United States". The fees exacted by customhouse brokers "are charges upon the commerce itself"; they are charges for services afforded in the movement of goods beyond the boundaries of a State. See *Hopkins* v. *United States*, 171 U. S. 578, 591-2; *Wickard* v. *Filburn*, 317 U. S. 111, 122.

But the Commerce Clause does not cut the States off from all legislative relation to foreign and interstate commerce. *S. C. Hwy. Dept.* v. *Barnwell Bros.* 303 U. S. 177; *Western Live Stock* v. *Bureau*, 303 U. S. 250. Such commerce interpenetrates the States and no undisputed generality about the freedom of commerce from state encroachment can delimit in advance the interacting areas of state and national power when Congress has not by legislation foreclosed state action. The incidence of the particular state enactment must determine whether it has transgressed the

power left to the States to protect their special state interests although it is related to a phase of a more extensive commercial process.

The information here sought of all foreign corporations by Minnesota as a basis for granting them certificates to do business within her borders is a conventional means of assuring responsibility and fair dealing on the part of foreign corporations coming into a State. Apart from any question of interference with foreign commerce such a requirement is plainly within the regulatory power of a State. But, as we have noted, while the business of Union is that of a customhouse broker, its activities are not confined to its services at the port of entry. It has localized its business, and to function effectively it must have a wide variety of dealings with the people in the community. The same considerations that justify the particular regulatory measure alone before us, namely the requirement of a certificate of authority in the case of foreign corporations carrying on business other than customhouse brokerage, apply to the carrying on of Union's business in Minnesota. The burden, such as it is, falls on foreign businesses that commingle with Minnesota people, and the burden, a fee of fifty dollars, is sufficiently small fairly to represent the cost of governmental supervision of foreign business enterprises coming into Minnesota. In short, it is a supervisory and not a fiscal measure. As such it imposes costs upon the State which those who are supervised must, as is often the case, themselves pay. See *Clyde Mallory Lines* v. *Alabama*, 296 U. S. 261, 267.

We have considered literally scores of cases in which the States have exerted authority over foreign corporations and in doing so have dealt with aspects of interstate and foreign commerce. Whatever may be the generalities to which these cases gave utterance and about which there has been, on the whole, relatively little disagreement, the fate of state legislation in these cases has not been determined by these generalities but by the weight of the circumstances and the practical and experienced judgment in applying these generalities to the particular instances. To review them to any extent would be writing the history of the adjudicatory process in relation to the Commerce Clause. Suffice it to say that we have not here a case of a foreign corporation merely coming into Minnesota to contribute to or to conclude a unitary interstate transaction, see *International Textbook Co.* v.

Pigg, 217 U. S. 91; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, nor of the State's withholding "the right to sue even in a single instance until the corporation renders itself amenable to suit in all the courts of the State by whosoever chooses to sue it there." *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 205. The business of Union, we have seen, is localized in Minnesota, and Minnesota, in the requirement before us, merely seeks to regularize its conduct. Nor is there here an attempt to tax property or gross receipts earned outside the State, as was the case in *Looney* v. *Crane Co.*, 245 U. S. 178. In the absence of applicable federal regulation, a State may impose non-discriminatory regulations on those engaged in foreign commerce "for the purpose of insuring the public safety and convenience; . . . a license fee no larger in amount than is reasonably required to defray the expense of administering the regulations may be demanded." *Sprout* v. *South Bend*, 277 U. S. 163, 169.

The Commerce Clause does not deprive Minnesota of the power to protect the special interest that has been brought into play by Union's localized pursuit of its share in the comprehensive process of foreign commerce. To deny the States the power to protect such special interests when Congress has not seen fit to exert its own legislative power would be to give an immunity to detached aspects of commerce unrelated to the objectives of the Commerce Clause. By its own force that Clause does not imply relief to those engaged in interstate or foreign commerce from the duty of paying an appropriate share for the maintenance of the various state governments. Nor does it preclude a State from giving needful protection to its citizens in the course of their contacts with businesses conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at interstate or foreign commerce, and involves merely burdens incident to effective administration. And so we conclude that in denying Union the right to go to her courts because Union did not obtain a certificate to carry on its business as required by the Foreign Corporation Act, Minnesota offended neither federal legislation nor the Commerce Clause.

Judgment affirmed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE dissent.